IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 302 of 2005

SATISH KUMAR
V/S
KRISHAN GOPAL & ORS

Mr. DR BHANDARI, for the appellant / petitioner

Mr. SAJJAN SINGH, for the respondent

Date of Order : 7.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

It was contended by learned counsel that the appellant was not given sufficient opportunity to file written-statement, so much so that even the application filed, seeking permission to deposit the cost was also dismissed. The other submission made is that some of the properties were not included in the suit for partition, which were required to be included, and for that purpose, the appellant filed specific application on 19.3.2001, which was required to be allowed, but the same has not been allowed.

I have heard learned counsel, and have considered the submission, and have also gone through the record.

From perusal of the record, it is clear that the appellant was duly represented by a counsel, and despite time being granted for filing written-statement, even on

cost, the same was not filed, and vide order dated 27.5.92, the defendants were debarred from participating in the further proceedings in the suit. Admittedly, this order dated 27.5.92 has not been challenged by the appellant before the learned lower Appellate Court, by raising appropriate ground in appeal, exercising right under Section 104 CPC, nor any revision was filed against that order. It appears that thereafter, the appellant filed an application seeking to review this order, and that application was dismissed by the learned trial Court on 13.8.93, against which order, a revision was filed before this Court being S.B.C.R.No.839/93, which was dismissed by this Court summarily on 15.12.93. Thereafter, the trial proceeded, and when the trial was just at the stage of final arguments, an application was filed under Section 10 CPC, which was dismissed vide order dated 16.7.97, and the case was fixed for final arguments. Thereafter, again the case was got adjourned. Then on 13.8.97, an application was filed by the present appellant, seeking to offer to deposit the cost, and requesting for taking the written-statement on record, that application was dismissed vide order dated 23.2.98. Admittedly, this order of the trial Court dated 23.2.98, has also never been challenged before the learned lower Appellate Court, by setting forth the appropriate ground, as required by Section 104 CPC. It is a different story that the application was only an attempt to have the trial reopened after the trial had completed, and was

rightly dismissed by the learned trial Court, in any case the fact remains that in absence of the order dated 27.5.92, and 23.2.98 having been challenged before learned lower Appellate Court, the contention raised by the learned counsel about the appellant having not been given sufficient opportunity to file written-statement cannot be entertained.

So far as the dismissal of the application dated 19.3.2001 is concerned, again for the same reasons, viz., that the order dated 24.4.2001 having not been challenged by the appellant before the learned lower Appellate Court by exercising his rights under Section 104 CPC, that order cannot be allowed to be challenged now for the first time in second appeal.

No other point was argued.

Thus, the appeal does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

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